IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. NO.36-D OF 2004
(Under Section 173 of Motor Vehicles Act)

District : Tehri Garhwal

United India Insurance Company Limited.
Through its Divisional Office
Ranipur Morh, Haridwar. ……..… Appellant,

Versus

1. Smt. Bino Devi, w/o late arjun Singh,
2. Km. Anju, d/o late Arjun Singh,
3. Master Deepak, s.o late Arjun Singh,
   Respondent No.2 and 3 through Smt. Bino Devi,
   (Natural Guardian)
4. Sri Tikam Singh, s/o Sri Padam Singh,

   All residents of Velmala, Patti Silwar,
   District Tehri Garhwal.

5. Sri Jabar Singh Bhandari, s/o Sri Hari Singh,
   R/o Parogi, Patti Silwar, District Tehri Garhwal,
6. Sri Nagendra Singh s/o Ludar Singh,
   R/o Kandi Talli, Patti Silwar,
   District Tehri Garhwal

……..…. Respondents.

For appellant: Sri DS Patni, Advocate,
For respondents: Sri A. Rab, Advocate.

September 3, 2004.

Hon’ble P.C. Verma, J.,
Hon’ble B.S. Verma, J.

This appeal has been field against award dated 24.12.2003 passed by the Motor Accident Claims Tribunal, Tehri Garhwal in M.A.C. No.27/2002 awarding a compensation of Rs.4,10,000/- to the claimants with interest at the rate of 6% p.a.

The alleged accident took place on 9.7.2002 at Lalotna on Aglar-Thatyur motor road, Patwari Circle Kyari, Distt. Their Garhwal in which truck No.UP 07E/0105 was involved. Arjun Singh was traveling in this truck as conductor got injured and died on the spot. The owner admitted the accident but stated in his written statement that two persons suddenly came in front of the vehicle and in an effort to save them the vehicle fell into the khudd. The insurance company challenged the petition on the ground of absence of valid papers of the vehicle as well as the deceased being an unauthorised traveler. The learned Tribunal framed 5 issues to determine all the pleas taken by the parties and held the driver of the vehicle responsible for rash and negligent driving due to which the Arjun Singh died. The Tribunal held the driving license and other papers of the vehicle to be perfectly valid. The Tribunal also found that non-fare paying two passengers were also insured and the deceased was a bona fide passenger cum employee to travel in it. The Tribunal accordingly assessed compensation payable to the claimants and allowed the petition.

In this appeal, the award has been challenged on the ground that in the F.I.R. deceased was mentioned as a Mazdoor and nota conductor or cleaner and as such he was a gratuitous passenger, and he was being paid Rs.2000/- while the Tribunal has assessed the monthly income at Rs.3000/- and that the amount of compensation awarded is exorbitant.

We have heard the lenred counsel for both the parties and have perused the record.

It has been argued on behalf of the appellant that the claim petition was not maintainable under the Motor Vehicles Act, rather the petition should have been field under the Workmen’s Compensation Act as the deceased was an employee/cleaner of the vehicle involved in the

accident. This argument is not at all tenable in view of the clear provisions of Section 167 of the M.V. Act which reads as under:

"Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X, claim such compensation under wither of those Acts but not under both."

So far as the contention challenging the quantum of the award is concerned, it is not open to the insurance Company in view of the law laid down in National Insurance Company Ltd., Chandigarh vs. Nicolletta Rohtagi and others, (2002) 7 Supreme Court Cases 456.

Nothing has been shown on behalf of the appellant which may prove a bit that the deceased was a mazdoor and not a conductor. The copy of alleged F.I.R. has not been field and the statement of witness that he has 'shown' the deceased as a mazdoor in the F.I.R. leads to no definite conclusion. The owner and driver of the vehicle have admitted in their written statement that Arjun Singh was conductor although he has also stated the he used to pay Rs.2000/- p.m. to the deceased, but except this there is nothing to disprove the claimants case and the evidence of Sm Bino Devi that Jabar Singh used to give that much of salary to her husband which the deceased gave to her. The Tribunal has, thus, committed no error in arriving at the above finding. We find no force in the contention of the appellant that since the owner of the vehicle did not file an appeal against the award passed against the appellant-insurer, it maybe assumed that the owner was in connivance with the claimants. We find that this appeal has no merit and is liable to be dismissed.

This appeal is dismissed and the judgment of the learned Tribunal is confirmed.

The amount of award, deposited by the appellant in this court, shall be remitted to the Tribunal concerned. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

SPA/3.9.04